

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 In re:) Case No. 22-21184-B-13
4 BERTHA LEE VALENTINE,) Adversary No. 22-2086
5)
6 Debtor(s) .)
7 _____)
8 BERTHA LEE VALENTINE,)
9 Plaintiff(s),)
10 v.)
11 ROY B. HOLMES, III, ALLIANCE)
12 ROTH 401(k) PROFIT SHARING PLAN)
13 AND TRUST, SHAWN O'CONNOR and)
14 YELENA OSTROVSKY, as Trustees)
15 of the Alliance Roth 401(k))
16 Profit Sharing Plan and Trust,)
17 Defendant(s) .)
18 _____)

19 **MEMORANDUM DECISION GRANTING PARTIAL SUMMARY JUDGMENT FOR**
20 **PLAINTIFF ON CLAIMS UNDER 11 U.S.C. § 362(a) IN THE EIGHTH AND**
21 **NINTH CLAIMS FOR RELIEF OF THE COMPLAINT**

22 This memorandum decision holds that *all* acts taken in
23 violation of the automatic stay of 11 U.S.C. § 362(a) are void
24 and are of absolutely no effect whatsoever regardless of whether
25 the acts are willful or so-called "technical" automatic stay
26 violations. This memorandum decision also holds that a
27 bankruptcy court has the authority to declare acts that violate
28 the automatic stay void independent of its authority to determine
whether the violations warrant actual damages and attorney's fees
under 11 U.S.C. § 362(k) .

**I.
Introduction**

Plaintiff Bertha Valentine is 80 years old. She is also the debtor in the parent Chapter 13 case.

Plaintiff filed the Complaint that commenced this adversary proceeding on August 29, 2022. See Adv. Docket 1. Generally, the Complaint alleges: (1) Plaintiff met with Defendant Roy B. Holmes, III, in Las Vegas, Nevada; (2) Holmes convinced Plaintiff it was necessary for Plaintiff to sign a Quitclaim Deed conveying her residence to him so that he could help Plaintiff with mortgage issues; (3) Plaintiff was unrepresented and did not understand the implications of signing the Quitclaim Deed; (4) Holmes obtained a rental agreement from occupants who reside with Plaintiff at her residence; (5) Holmes conveyed Plaintiff's residence to Defendant Alliance 401(k) Profit Sharing Plan and Trust; (6) Plaintiff sued Holmes in state court to void the Quitclaim Deed, recorded a lis pendens in the state court action, and thereafter filed a Chapter 13 bankruptcy case; (7) Alliance 401(k) Profit Sharing Plan and Trust conveyed Plaintiff's residence to Defendant Alliance Roth 401(k) Profit Sharing Plan and Trust; (8) in an effort to obtain title to and possession of Plaintiff's residence, Defendants (other than Holmes) retained an attorney by the name of Steffanie Stelnick who filed quiet title and unlawful detainer actions against Plaintiff and her residence in state court; and (9) transfers of the Plaintiff's residence occurred and were recorded - and attorney Steffanie Stelnick filed the quiet title and unlawful detainer actions in state court - after Plaintiff filed her bankruptcy petition.

1 Defendants Shawn O'Connor, Yelena Ostrovsky, Alliance 401(k)
2 Profit Sharing Plan and Trust, and/or Alliance Roth 401(k) Profit
3 Sharing Plan and Trust filed an answer on October 4, 2022. See
4 Adv. Docket 8. Defendant Holmes filed an answer on October 25,
5 2022.¹ See Adv. Docket 23.

6 On October 25, 2022, the court issued an *Order and Notice of*
7 *Intent to Sua Sponte Grant Partial Summary Judgment for Plaintiff*
8 *on Eighth and Ninth Claims for Relief and Providing Opportunity*
9 *to Respond* (the "Order and Notice"). See Adv. Docket 24. The
10 Order and Notice informed the parties of the court's intent to
11 *sua sponte* grant partial summary judgment for Plaintiff on claims
12 brought under 11 U.S.C. § 362(a) in the Eighth and Ninth Claims
13 for Relief of the Complaint. It also noted the unique procedural
14 posture of this adversary proceeding which permitted the court to
15 consider facts undisputed for purposes of summary judgment.²

16 The Order and Notice further provided Defendants with an
17 opportunity to respond under Local Bankruptcy Rule 7056-1 by
18 November 15, 2022. None of the Defendants availed themselves of
19 that opportunity.³

20
21 ¹Holmes' default was entered on October 6, 2022, see Adv.
22 Docket 16, and vacated on October 29, 2022. See Adv. Docket 26.

23 ²The court noted that the Complaint is supported by
24 Plaintiff's declaration and authenticated exhibits which were
25 filed with the Complaint. See Adv. Dockets 6, 7. Defendants
have also made relevant admissions in a sworn declaration filed
in the parent Chapter 13 case. See Bankr. Docket 23.

26 ³Defendants' arguments in response or opposition to the
27 Order and Notice are deemed waived and forfeited. See United
28 Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 275 (2010)
("United therefore forfeited its arguments . . . by failing to
raise a timely objection in [the bankruptcy] court."); Reid and

**II.
Undisputed Facts**

The presence or absence of a genuine dispute of material fact lies at the core of the summary judgment process. It is therefore critical that, when responding to a motion for summary judgment, a non-moving party challenge asserted undisputed facts. See Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056.

Failure to dispute an assertion of fact permits the court to consider the fact undisputed for purposes of a motion for summary judgment and grant summary judgment. See Fed. R. Civ. P. 56(e)(2)-(3);⁴ Fed. R. Bankr. P. 7056. This court's local rules also stress the importance of disputing assertions of undisputed facts. See Local Bankr. R. 7056-1(b).⁵

Heller, APC v. Laski (In re Wrightwood Guest Ranch, LLC), 896 F.3d 1109, 1113 (9th Cir. 2018). Oral argument is not necessary and it will not assist in the decision-making process. See Local Bankr. R. 9014-1(h), 1001-1(f). The hearing on December 6, 2022, will be vacated.

⁴The relevant part of the Civil Rule states as follows:
If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

[. . .]

(2) consider the fact undisputed for purposes of the motion; [or]

(3) grant summary judgment if the motion and supporting materials-including the facts considered undisputed- show that the movant is entitled to it[.]

⁵The relevant part of the local rule states as follows:
Any party opposing a motion for summary judgment or partial judgment shall reproduce the itemized facts in the Statement of Undisputed Facts and admit those facts which are undisputed and deny those which are disputed, including with each denial a citation to the particular portions of any pleading, affidavit, deposition,

1 The United States Supreme Court has stated that a party
2 opposing summary judgment who "fail[s] specifically to challenge
3 the facts identified in [a] statement of undisputed facts . . .
4 is deemed to have admitted the validity of [those] facts[.]".
5 Beard v. Banks, 548 U.S. 521, 527 (2006); accord Moon v. Rush, 69
6 F.Supp. 3d 1035, 1039-40 (E.D. Cal. 2014) (under local district
7 court rule virtually identical to local bankruptcy court rule);
8 Baroni v. NationStar Mortgage, Inc. (In re Baroni), 2015 WL
9 6956664, *6 (9th Cir. BAP Nov. 10, 2015) ("Once the moving party
10 has presented facts as undisputed and has presented admissible
11 evidence in support of those facts, the non-moving party may be
12 deemed to have admitted those facts for summary judgment purposes
13 unless he or she specifically challenges those facts and presents
14 controverting evidence in support of his or her position.").

15 Defendants' failure dispute facts identified as undisputed
16 means the following facts are admitted for present purposes:

17 (1) Plaintiff resides at 3854 Townshend Circle,
18 Stockton, California. Adv. Docket 6 at ¶ 2.

19 (2) Plaintiff acquired her residence with her now
20 deceased husband in 2003. Id. at ¶ 4; Adv. Docket 7 at
21 Ex. 1.

22 (3) Prior to her husband's death, Plaintiff and her
23 husband held the residence as joint tenants. Adv.
24 Docket 6 at ¶ 5; Adv. Docket 7 at Ex. 2.

25 (4) On or about September 22, 2011, Plaintiff conveyed
26 her residence to a revocable trust and thereafter held

27 interrogatory answer, admission, or other document
28 relied upon in support of that denial. The opposing
party may also file a concise 'Statement of Disputed
Facts,' and the source thereof in the record, of all
additional material facts as to which there is a
genuine issue precluding summary judgment or
adjudication.

1 the property as trustee of the trust. Adv. Docket 6 at
2 ¶ 7; Adv. Docket 7 at Ex. 3.

3 (5) A June 10, 2021, Quitclaim Deed which purports to
4 convey Plaintiff's residence to Holmes was recorded
5 with the San Joaquin County Recorder on June 17, 2021,
6 as Document No. 2021-104274. Adv. Docket 6 at ¶¶ 12,
7 15; Adv. Docket 7 at Ex. 5; Bankr. Dkt. 23 at Ex. 2.

8 (6) Disputing the validity of the Quitclaim Deed on
9 the basis it was fraudulently obtained, on September
10 29, 2021, Plaintiff filed an action against Holmes in
11 the San Joaquin County Superior Court (Case No.
12 STK-CV-2021-0009120) which seeks to void the Quitclaim
13 Deed. Adv. Docket 6 at ¶ 17.

14 (7) A lis pendens concerning the Plaintiff's state
15 court action was recorded with the San Joaquin County
16 Recorder on October 7, 2021, as Document No. 2021-
17 168697, and on November 9, 2021, as Document No. 2021-
18 187604. Adv. Docket 6 at ¶ 18; Adv. Docket 7 at Ex. 7.

19 (8) Plaintiff filed a Chapter 13 petition on May 9,
20 2022 ("Petition Date"). Adv. Docket 6 at ¶ 19; Bankr.
21 Docket 1.⁶

22 (9) A May 20, 2022, Quitclaim Deed which purports to
23 transfer Plaintiff's residence from Holmes to Shawn
24 O'Connor and Yelena Ostrovsky, Trustees of the Alliance
25 401(k) Profit Sharing Plan and Trust, was recorded with
26 the San Joaquin County Recorder on May 23, 2022, as
27 Document No. 2022-065505. Adv. Docket 6 at ¶ 21; Adv.
28 Docket 7 at Ex. 10; Bankr. Dkt. 23 at Ex. 4.

(10) An unrecorded May 31, 2022, Grant Deed purports to
transfer Plaintiff's residence from Shawn O'Connor and
Yelena Ostrovsky, Trustees of the Alliance 401(k)
Profit Sharing Plan and Trust, to Shawn O'Connor and
Yelena Ostrovsky, Trustees of the Roth 401(k) Profit
Sharing Plan and Trust. Adv. Docket 6 at ¶ 23; Adv.
Docket 7 at Ex. 12.

(11) On or about June 10, 2022, a Three-Day Notice to
Pay Rent or Quit signed by attorney Steffanie Stelnick
was posted on Plaintiff's residence. Adv. Docket 6 at
¶ 20; Adv. Docket 7 at Ex. 9.

(12) On June 29, 2022, attorney Steffanie Stelnick
filed a complaint, which seeks to quiet title to
Plaintiff's residence in Defendants Shawn O'Connor and

⁶The September 29, 2021, state court action was pending on
the Petition Date. See Bankr. Docket 1, Official Form 107, No. 9

1 Yelena Ostrovsky as Trustees of the Alliance Roth
2 401(k) Profit Sharing Plan and Trust and which names
3 Plaintiff individually as a defendant, in the San
4 Joaquin County Superior Court (Case #STK-CV-URP-2022-
0005483). Adv. Docket 6 at ¶ 23; Adv. Docket 7 at Ex.
12; Bankr. Dkt. 23 at Ex. 7.

5 (13) On July 13, 2022, attorney Steffanie Stelnick
6 filed an unlawful detainer complaint in the San Joaquin
7 County Superior Court (Case #STK-CV-LUDR-2022-6501)
8 which seeks to obtain possession of Plaintiff's
9 residence on behalf of Shawn O'Connor as Trustee of the
10 Alliance Roth 401(k) Profit Sharing Plan and Trust.
11 Adv. Docket 6 at ¶ 24; Adv. Docket 7 at Ex. 13.

12 (14) A version of the Grant Deed of May 31, 2022, this
13 one dated June 7, 2022, was recorded with the San
14 Joaquin County Recorder on October 26, 2022, as
15 Document No. 2022-123236. Bankr. Dkt. 21 at ¶ 5;
16 Bankr. Dkt. 21 at Ex. 8.⁷

17 **III.** 18 **Jurisdiction and Venue**

19 The court has jurisdiction over this adversary proceeding
20 pursuant to 28 U.S.C. §§ 157(b)(2) and 1334. The claims brought
21 under 11 U.S.C. § 362(a) in the Eighth and Ninth Claims for
22 Relief are core matters under 28 U.S.C. §§ 157(b)(2)(A), (G), and
23 (O). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

24 **IV.** 25 **Applicable Legal Standard**

26 Civil Rule 56(f) - made applicable in this adversary
27 proceeding by Bankruptcy Rule 7056 - states as follows: "After
28 giving notice and a reasonable time to respond, the court may:
... (3) consider summary judgment on its own after identifying

⁷"The court need not consider only the cited materials, but
it may consider other materials in the record." Fed. R. Civ. P.
56(c)(3); Fed. R. Bankr. P. 7056.

1 for the parties material facts that may not be genuinely in
2 dispute.” Fed. R. Civ. P. 56(f)(3); see also Norse v. City of
3 Santa Cruz, 629 F.3d 966, 971-73 (9th Cir. 2010) (en banc).

4 Summary judgment is warranted when there is no genuine
5 dispute as to any material fact and judgment may be entered as a
6 matter of law. See Fed. R. Civ. P. 56(a); Fed. R. Bankr. P.
7 7056. A motion for summary judgment calls for a “threshold
8 inquiry” into whether a trial is necessary, that is, whether
9 there are “any genuine factual issues that properly can be
10 resolved only by a finder of fact because they may reasonably be
11 resolved in favor of either party.” Anderson v. Liberty Lobby,
12 Inc., 477 U.S. 242, 250 (1986). The court does not weigh
13 evidence or assess credibility; rather, it determines which facts
14 are not disputed then draws all inferences and views all evidence
15 in the light most favorable to the non-moving party. See Id. at
16 255; Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S.
17 574, 587-88 (1986). “Where the record taken as a whole could not
18 lead a rational trier of fact to find for the non-moving party,
19 there is no ‘genuine issue for trial.’” Matsushita, 475 U.S. at
20 587; see also C.A.R. Transp. Brokerage Co. v. Darden Restaurants,
21 Inc., 213 F.3d 474, 480 (9th Cir. 2000) (citations, internal
22 quotations omitted).

23
24 **V.**
25 **Analysis**

26 **A.**
27 *Applicability of the Automatic Stay*

28 The filing of a bankruptcy petition invokes the automatic
stay of 11 U.S.C. § 362(a) which “effect[s] an immediate freeze

1 of the *status quo* by precluding and nullifying post-petition
2 actions, judicial or nonjudicial, in nonbankruptcy fora against
3 the debtor or affecting the property of the estate." Mwangi v.
4 Wells Fargo Bank, N.A. (In re Mwangi), 764 F.3d 1168, 1173 (9th
5 Cir. 2014) (emphasis in original, quotation omitted).

6 The scope of the automatic stay is expansive. As noted in
7 In re Daniel, 404 B.R. 318 (Bankr. N.D. Ill. 2009), it applies to
8 three kinds of activity:

9 (1) activity directed against "the debtor" personally,
10 such as "the commencement or continuation ... of a
11 judicial, administrative, or other action or proceeding
12 against the debtor" (11 U.S.C. § 362(a)(1));

13 (2) activity directed against property of the debtor's
14 estate, such as "any act to obtain possession of
15 property of the estate" or "of property from the
16 estate" or "to exercise control over property of the
17 estate" and "any act to create, perfect or enforce any
18 lien against property of the estate" (11 U.S.C. §§
362(a)(3) and (4)); and

19 (3) activity directed against "property of the debtor,"
20 such as "any act to create, perfect, or enforce against
21 property of the debtor any lien to the extent that such
22 lien secures a claim that arose before the commencement
23 of the case" (11 U.S.C. § 362(a)(5)).

24 See Id. at 322.

25 In the present context, the automatic stay protects
26 Plaintiff individually as a Chapter 13 debtor.

27 The automatic stay also protects an interest Plaintiff had
28 in her residence when she filed her bankruptcy petition.

All of a debtor's legal and equitable interests in property
become property of the estate when a bankruptcy case is filed.
See 11 U.S.C. § 541(a)(1). Bankruptcy courts look to state law
to ascertain the extent of a debtor's legal and equitable
interests at the start of a bankruptcy case and, thus, the extent

1 of property of the estate under 11 U.S.C. § 541(a)(1) protected
2 by the automatic stay of 11 U.S.C. § 362(a). Butner v. United
3 States, 440 U.S. 48, 54-55 (1979); Lowenschuss v. Selnick (In re
4 Lowenschuss), 170 F.3d 923, 929 (9th Cir. 1999). The applicable
5 state law here is California lis pendens law.⁸

6 A lis pendens is a real property interest under California
7 law. As the Ninth Circuit explained in Hurst Concrete Products,
8 Inc. v. Lane (In re Lane), 980 F.2d 601 (9th Cir. 1992), "under
9 California law, a party attains an interest [in real property]
10 superior to subsequent purchasers upon recordation of the lis
11 pendens." Id. at 606 (emphasis added); see also United States v.
12 \$3,124,977.28 in U.S. Currency, 239 Fed.Appx. 335, 3352007 WL
13 1814329, *1 (9th Cir. June 22, 2007) ("Under California law, a
14 properly recorded and indexed lis pendens provides parties who
15 subsequently acquire an interest in the property with
16 constructive notice of the interest reflected in the lis
17 pendens.").

18 The interest represented in the lis pendens is contingent
19 until a judgment in the underlying litigation is entered at which
20 point the contingency is removed and the interest is quantified.
21 See Lane, 980 F.2d at 605 ("Until judgment, [plaintiff's]
22 interest [under the recorded lis pendens] may have been the
23 entire property, a lien on the property, or zero interest in the
24

25 ⁸Federal courts look to state lis pendens law. Singh v.
26 Baidwan, 2017 WL 616436, *1 (E.D. Cal. Feb. 14, 2017). The
27 California legislature has also stated that California's lis
28 pendens laws should apply in federal court. See Cal. Code Civ.
P. § 405.5 ("This title applies to an action pending in any
United States District Court in the same manner that it applies
to an action pending in the courts of this state.").

property."); see also United States v. Alvarado, 108 F.3d 339, 1997 WL 68037, *1 (9th Cir. Feb. 18, 1997) ("The government was merely protecting its potential interest in the property by filing the lis pendens [under California law].").⁹ The contingent interest, however, is no less property of the bankruptcy estate. Neuton v. Danning (In re Neuton), 922 F.2d 1379, 1382-83 (9th Cir. 1990); see also Anderson v. Rainsdon (In re Anderson), 572 B.R. 743, 747 (9th Cir. BAP 2017) ("In this Circuit, any contingent interest of the debtor 'sufficiently rooted in the pre-bankruptcy past' is estate property, even if the contingency is not satisfied until after the bankruptcy is filed."); Jones v. Mullen (In re Jones), 2014 WL 465631, *5 (9th Cir. BAP Feb. 5, 2014) (citing Neuton as "longstanding Ninth Circuit precedent which holds that property of the estate under § 541(a)(1) includes contingent interests."). And as such, it is protected by the automatic stay of 11 U.S.C. § 362(a).

Applying the foregoing principles here, Plaintiff recorded a lis pendens concerning her residence in October and November

⁹The contingent nature of the interest pending judgment is also reflected in Cal. Code Civ. P. § 405.24 which states: From the time of recording the notice of pendency of action, a purchaser, encumbrancer, or other transferee of the real property described in the notice shall be deemed to have constructive notice of the pendency of the noticed action as it relates to the real property and only of its pendency against parties not fictitiously named. *The rights and interest of the claimant in the property, as ultimately determined in the pending noticed action, shall relate back to the date of the recording of the notice.* (Emphasis added).

1 2021. Inasmuch as the lis pendens was of record on the Petition
2 Date, *i.e.*, May 9, 2022, and as of the Petition Date judgment had
3 not been entered in the litigation from which the lis pendens
4 arises, Plaintiff had a contingent interest in her residence when
5 she filed her bankruptcy case. The contingent interest became -
6 and remains - property of Plaintiff's bankruptcy estate. As
7 such, it is protected by the automatic stay.

8 *B.*
9 *Violations of the Automatic Stay*

10 Automatic stay violations may be willful or technical.

11 "A willful violation is satisfied if a party knew of the
12 automatic stay, and its actions in violation of the stay were
13 intentional." Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210,
14 1215 (9th Cir. 2010) (citing Pinkstaff v. United States (In re
15 Pinkstaff), 974 F.3d 113, 115 (9th Cir. 1992)). Intent to
16 violate the automatic stay is irrelevant and only the actions
17 themselves need be intentional. Pinkstaff, 974 F.3d at 115
18 (citing Goichman v. Bloom (In re Bloom), 875 F.2d 224, 227 (9th
19 Cir. 1989)).

20 A technical violation may occur when actions are taken
21 without notice of the bankruptcy case or knowledge of the
22 automatic stay. In re Iezzi, 504 B.R. 777, 792 (Bankr. E.D. Pa.
23 2014); In re Kline, 424 B.R. 516, 523 (Bankr. N.M. 2010).

24 In the Ninth Circuit, "violations of the automatic stay
25 [are] void, not voidable." Schwartz v. United States (In re
26 Schwartz), 954 F.2d 569, 571 (9th Cir. 1992); see also Gruntz v.
27 County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1082 (9th
28 Cir. 2000) (en banc).

1 Nevertheless, the Ninth Circuit Bankruptcy Appellate Panel
2 recently suggested that a technical violation may be voidable:

3 This panel has expressed some support for 'the idea
4 that a technical violation of stay will not necessarily
5 make that violation void.' Wash. Mut. Sav. Bank v.
6 James (In re Brooks), 79 B.R. 479, 481 (9th Cir. BAP
7 1987), *aff'd on other grounds*, 871 F.2d 89 (9th Cir.
8 1989); *see also* Jones v. Wingo (In re Wingo), 89 B.R.
9 54, 57 (9th Cir. BAP 1988) (stating in dicta that
'[t]here are situations in which a technical violation
of the stay will not necessarily render that violation
void'). The Ninth Circuit has expressly 'refrain[ed]
from addressing the validity of the Brooks exception."
Schwartz v. United States (In re Schwartz), 954 F.2d
569, 574-75 (9th Cir. 1992).

10 Koeberer v. California Bank of Commerce (In re Koeberer), 632
11 B.R. 680, 690 n.4 (9th Cir. BAP 2021).

12 The Ninth Circuit has not adopted the so-called "Brooks
13 exception." And this court doubts it would for several reasons.

14 First, the Ninth Circuit continues to recognize that
15 Schwartz stands for the proposition that *all* violations of the
16 automatic stay are void. Indeed, it said so in Burkart v.
17 Coleman (In re Tippet), 542 F.3d 684 (9th Cir. 2008):

18 In interpreting 11 U.S.C. § 362(a), we do not write on
19 a clean slate. In Schwartz, we addressed the question
20 whether violations of the automatic stay by creditors
21 were void ab initio or simply voidable. 954 F.2d at
22 570-71. We concluded that the purpose of the
provision—namely, broad protection of debtors from
creditors—could be vindicated only if *all* violations
were rendered void, not merely voidable. Id. at 571.

23 Id. at 691 (emphasis added); *see also* Bank of New York Mellon,
24 fka Bank of New York, as Trustee for the Certificate Holders of
25 CWALT, INC., Alternative Loan Trust 2005-54CB, Mortgage Pass-
26 Through Certificates Series 2005-54CB v. Enchantment at Sunset
27 Bay Condominium Assoc., 2 F.4th 1229, 1235 (9th Cir. 2021)
28 (VanDyke, J., concurring) (stating "we have consistently

1 reapplied In re Schwartz to affirm that any violations of the
2 automatic stay provision are indeed void[.]” (Emphasis added)).

3 Second, the authority on which the so-called “Brooks
4 exception” is based is questionable, at best. The Ninth Circuit
5 affirmed Brooks on standing grounds which means it did not reach
6 the void/voidable issue. James v. Washington Mut. Sav. Bank (In
7 re Brooks), 871 F.2d 89, 90 (9th Cir. 1989). It was also
8 recently noted that the suggestion in Brooks that some automatic
9 stay violations are voidable is “inconsistent with [the
10 Circuit’s] more recent bankruptcy jurisprudence.” Bank of New
11 York Mellon, 2 F.4th at 1236 (VanDyke, J., concurring) (so
12 stating). And Wingo was largely discredited in 40235 Washington
13 Street Corp. v. Lusardi, 329 F.3d 1076, 1083 (9th Cir. 2003).

14 Third, the BAP has retreated from the so-called “Brooks
15 exception” and, in so doing, has aligned itself with more recent
16 Ninth Circuit authority:

17 The voidness of acts and judicial proceedings pursued
18 in violation of the stay is a critical feature of one
19 of the most important provisions of the Bankruptcy
20 Code, because it helps to ensure that the stay is
21 self-executing. [].

22 *For voidness purposes, it makes no difference whether*
23 *the stay violator was aware of the stay when he or she*
24 *violated the stay. []. Regardless, all acts and*
25 *judicial proceedings undertaken in violation of the*
26 *stay are void. [].*

27 Carter v. Barber (In re Carter), 2016 WL 1704719, *4 (9th Cir.
28 BAP April 22, 2016) (emphasis added, internal citations omitted);
29 In re Gagliardi, 290 B.R. 808, 814 (Bankr. D. Colo. 2003)
30 (“Actions taken in violation of the automatic stay are void and
31 of no force or effect, even when there is no actual notice of the
32 existence of the stay.”).

1 The point here is that all acts that violate the automatic
2 stay are void without regard to any knowledge or notice of a
3 bankruptcy case or the automatic stay. The latter is relevant,
4 of course, for purposes of determining if damages and attorney's
5 fees are warranted under 11 U.S.C. § 362(k). But that
6 determination exists independent of the bankruptcy court's
7 authority to declare void all acts that violate the automatic
8 stay. In re Parast, 612 B.R. 710, 716 (Bankr. D.S.C. 2020)
9 (stating that damages are in addition to a void act and citing
10 Davis v. Blair (In re Davis), C/A No. 17-06271-JW, Adv. Pro. No.
11 18-80038-JW (Bankr. D.S.C. Oct. 3, 2018), as an example where the
12 bankruptcy court voided an arrest warrant and held a later
13 hearing to determine if the non-debtor who pursued proceedings
14 that resulted in the arrest warrant was liable for damages).

15 Turning to acts taken against Plaintiff and her contingent
16 interest in her residence, the following postpetition acts
17 violate the automatic stay, are void, and are of no effect:

18 (1) the May 20, 2022, Grant Deed and its recordation
19 on May 23, 2022, are **VOID** as a violation of 11 U.S.C. §
362(a)(3);

20 (2) the Grant Deeds of May 31, 2022, and June 7, 2022,
21 and the recordation of the latter on October 26, 2022,
are **VOID** as a violation of 11 U.S.C. § 362(a)(3);

22 (3) the notice to quit posted on Plaintiff's residence
23 on or about June 10, 2022, is **VOID** as a violation of 11
U.S.C. §§ 362(a)(1), (a)(3), and/or (a)(6);

24 (4) the actions filed in state court on June 29, 2022,
25 and July 13, 2022, are **VOID** as violations of 11 U.S.C.
§§ 362(a)(1), (a)(3), and/or (a)(6).¹⁰

26
27 ¹⁰Defendants (except Holmes) have moved for relief from the
28 automatic stay to proceed with their June 29, 2022, quiet title
action under 11 U.S.C. § 362(b)(24). To the extent not waived or

1 The underlying objective of each of the foregoing acts was
2 to divest Plaintiff of all right, title, interest in - and
3 ownership and possession of - her residence by postpetition
4 transfers of the residence, recordation of the transfers, and
5 confirmation and ratification of both through state court
6 litigation. In that regard, each act is in some measure an
7 exercise of control over the contingent interest that Plaintiff
8 had in her residence when she filed her bankruptcy case and thus,
9 at a very minimum, each act is an exercise of control over
10 property of the Plaintiff's bankruptcy estate. As explained
11 above, at this juncture the court need not determine who knew
12 what with regard to the Plaintiff's bankruptcy case and/or the
13 automatic stay when each act occurred. That determination will
14 be made at a later date for purposes of damages and attorney's
15 fees under 11 U.S.C. § 362(k). Suffice it to say for present
16 purposes, the above-described acts are void and of no effect.

17
18 **VI.**
19 **Conclusion**

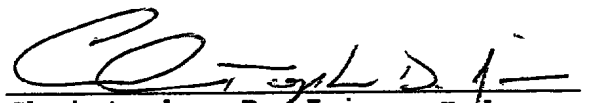
20 For all the foregoing reasons, and good cause appearing,
21 partial summary judgment will be **GRANTED** for Plaintiff and
22 against Defendants on the Eighth and Ninth Claims for Relief of
23 the Complaint as and to the extent stated hereinabove.

24
25 _____
26 forfeited, the argument is rejected. Section 362(b)(24) states
27 that a filed petition does not operate as a stay under "[362(a)]
28 of any transfer that is not avoidable under section 544 and that
is not avoidable under section 549." 11 U.S.C. § 362(b)(24). By
its terms, the exception applies to a transfer of property.
Defendants' quiet title action is not a transfer. It is
litigation. The exception is inapplicable.

1 The acts identified in paragraphs (1)-(4) on page 15 of this
2 memorandum decision are **VOID** and of no legal effect whatsoever.

3 A separate order will issue.

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5 **Dated:** December 02, 2022

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8 Christopher D. Jaime, Judge
9 United States Bankruptcy Court
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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Fred A. Ihejirika
1600 Sacramento Inn Way #109
Sacramento CA 95815

Sanaz S. Bereliani
12100 Wilshire Blvd., 8th Floor
Los Angeles CA 90025

Roy B. Holmes III
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